SALES—PROHIBITION OF CERTAIN CONTRACTS OF SALE—EXERCISE OF POLICE POWER.—A salesman of the Continental Tobacco Company who gave a jobber a rebate of purchase price on condition that he would agree not to handle the tobacco of any other firm, *held,* liable under a state statute, forbidding any person, etc., from making it a condition of the sale of goods, wares or merchandise, that the purchaser should not deal in the goods, etc., of any other person, etc. *Commonwealth* v. *Strauss* (1906), — Mass. —, 78 N. E. Rep. 136.

The case is of economic as well as legal interest as embodying one of the many schemes of present day legislatures to prohibit the unfair competition of such practical monopolies as the Continental Tobacco Company. The constitutionality of the statute was attacked on the ground that it was an unwarranted infringement of the right of free contract and an interference with inter-state commerce. That the court should have held that the protection of the state justified such a restriction of the right to contract is a significant comment on our industrial status. Whether an exercise of the police power is justified depends upon the necessity to public welfare of the end to be accomplished and the adaptability of the means proposed. Thus the restriction of working hours of bakery employees was held invalid. *Lochner* v. *New York,* 198 U. S. 45, 25 Sup. Ct. 539; as was also a law forbidding the discharge of employees because of membership in labor organizations, *State* v. *Kreutzberg,* 114 Wis. 530, 90 N. W. 1098. But the following have recently been upheld as valid under the police power: prohibition of consolidation of competing companies, *Louisville, Etc., R. R.* v. *Kentucky,* 161 U. S. 677; that contracts of sales of shares on margins shall be void, *Otis* v. *Parker,* 187 U. S. 606; that eight hours shall constitute a day's work, *Atkins* v. *Kansas,* 19 U. S. 207; that all evidence of indebtedness issued by employers to their men be redeemed in cash, *Knoxville Iron Co.* v. *Harbison,* 183 U. S. 13; the enactment of a "Bulk Law," *Squire* v. *Tellier,* 185 Mass. 18, 69 N. E. 312; an act requiring carriers to provide their ticket agents with certificates of authority, *Burdick* v. *People,* 149 Ill. 611, 36 N. E. 948; the prohibition of payment of employees in scrip, *Peel Splint Coal Co.* v. *State,* 36 W. Va. 802, 15 S. E. 1000; act to compel payment of wages on specified days, *Commonwealth* v. *Coal Mining Co.,* 79 S. W. 287 (Kentucky); an act to compel railroad corporations to maintain cattle guards, *Thorpe* v. *Rutland, Etc., Ry.,* 27 Vt. 140; an act prohibiting transactions calculated to lessen competition in trade, *State* v. *Schlitz Brewing Co.,* 104 Tenn. 715, 59 S. W. 1033; *Fuqua* v. *Pabst Brewing Co.,* 90 Tex. 298, 38 S. W. 29; *State* v. *Buckeye Pipe Line Co.,* 61 Ohio St. 520, 56 N. E. 464. It would seem therefore that the exercise of its police power by the state of Massachusetts involved in the principal case, is well supported by authority. When the exercise of police power by a state affects inter-state commerce the validity of the state legislation seems to depend upon whether the interference is but incidental or whether it is direct. The fact that inter-state commerce is indirectly influenced by an otherwise valid regulation under the police power does not render such enactment void as repugnant to the Federal Constitution; *Plumley* v. *Mass.,* 155 U. S. 461, extended this principle to allow the state to absolutely prohibit the introduction into state of an article calculated to deceive. Many cases

support the general proposition; *Commonwealth* v. *Huntley,* 156 Mass. 236, 30 N. E. 1127; *Chicago, etc., R. R.* v. Solon, 169 U. S. 133; *Missouri, etc., Ry. Co.* v. *Haber,* 169 U. S. 613; *Richmond, etc., Ry. Co.* v. *Tobacco Co.,* 169 U. S. 311; *Western, etc., Co.* v. *James,* 162 U. S. 650. Monopolies which only incidentally restrict inter-state commerce are not within Federal Anti-Trust Law. *Whitwell* v. *Continental Tobacco Co.,* 125 Fed. 454, 64 L. R. A. 689. But where inter-state commerce is directly concerned the federal law must control. *Anderson* v. *United States,* 171 U. S. 604; *United States* v. *Joint Traffic Ass.* 171 U. S. 505; *Addyston Pipe, etc., Co.* v. *United States,* 175 U. S. 211. The decision in the principal case is apparently in conformity with the weight of authority and is suggestive of a practical curb upon the business methods of unscrupulous corporations.

SALES—STOPPAGE IN TRANSITU—WAREHOUSEMAN—REDELIVERY OF SHIPPING RECEIPTS—BANKRUPT VENDEE.—Plaintiff sold C. and Company some grain and shipped it to them, according to their directions, care of the defendant who maintained a warehouse. Within a few days after shipment the vendee was put into bankruptcy and on the same day but after becoming bankrupt the vendee sent plaintiff the shipping receipts. Plaintiff sought to recover the grain of defendant both as a vendor attempting to exercise the right of stoppage in transitu, (the grain having reached the warehouse) and as holder of the shipping receipts. *Held,* that delivery by the carrier to the defendant ended the transitus, the right of stoppage in transitu was cut off, and that redelivery of shipping receipts by the bankrupt consignee did not reinvest consignor with title to the grain. *Grange Company* v. *Farmers' Union and Milling Company* (1906), — Cal. Ct. App. —, 86 Pac. Rep. 615.

The case illustrates two interesting questions in the law of sales, viz., when delivery to a warehouseman ends the transitus, and when a vendee can save his vendor from loss due to the vendee's insolvency by reinvesting him with title to the goods. Delivery to a warehouseman is such delivery as will cut off the right of stoppage in transitu, when the warehouseman is the agent of the buyer for the purpose of holding and keeping the goods and not of forwarding them. BENJAMIN, SALES (Sixth American Edition), p. 1079, § 1254, and cases cited; MECHEM, SALES, p. 1323, §1580, and cases cited; *Morer* v. *Lott,* 13 Nev. 376; *Hoover* v. *Tibbits,* 13 Wis. 89; *Greve* v. *Dunham,* 60 Ia. 108, 14 N. W. 130; *Mason* v. *Wilson,* 43 Ark. 172. When warehouseman is agent of the carrier to collect freight, etc., or is forwarding agent of the vendee or acts as agent of the vendor the transitus is not ended by delivery to him. BURDICK, SALES (Second Edition), p. 239, §§ 393, 395; MECHEM, SALES, p. 1323, § 1580, and cases cited; *Hoover* v. *Tibbits,* 13 Wis. 89; *Mohr* v. *Boston R. R.,* 106 Mass. 67; *Milliard* v. *Webster,* 54 Conn. 415, 8 Atl. 470; *Covell* v. *Hitchcock,* 23 Wend. 611. In the principal case there was little doubt that defendant was agent of C. and Co. to hold the grain, and on authority, the transitus would seem to have been ended and the right of stoppage in transitu, gone. The right of a consignee to reinvest a consignor with title depends entirely upon the attending circumstances. If the consignee is solvent at the time, there is no apparent reason why with consignor's con-